

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3298 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

A.K. MORISIA, VICE PRESIDENT OF NAVSARI

Versus

STATE OF GUJARAT

Appearance:

NOTICE SERVED for Petitioner

MR BD DESAI, AGP for Respondent

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 24/03/2000

ORAL JUDGEMENT

1. In this petition under Article 226 of the Constitution, the petitioner has prayed for a permanent injunction to restrain the State of Gujarat from enforcing the provisions of amended Rules 221, 222 and 224 of the Bombay Motor Vehicles Rules and to declare the Rules 221(1), 222(2) and 222(4) of the Bombay Motor Vehicles Rules, 1959 as ultra vires the Motor Vehicles

Act, 1939 and also ultra vires the provisions of the Constitution. The petitioner had also prayed for certain interim reliefs.

2. This petition is filed by Vice President of Navsari Autorickshaw Drivers Co-operative Society Ltd. In spite of service of the notice on the petitioner, none appears for the petitioner. Since the matter is pending for final disposal since 1983, the court has proceeded to finally hear and dispose of the petition.

3. After hearing Mr.B.D.Desai, learned Assistant Government Pleader for the State Government and Mr.R.A.Mishra appearing for Narhariprasad Maganlal Dave whose application for joining him as party respondent was ordered to be heard alongwith this petition. The stand of the applicant (Mr.Narhariprasad Maganlal Dave) of Civil Application No.3095/83 is that the applicant supports the rules challenged by the petitioner and that the rules have been framed in the larger interest of the public and particularly the passengers travelling by rickshaws. The order passed by the authority on the basis of the Amended Rules is required to be implemented by vacating the exparte interim relief granted in favour of the petitioner. It appears that, after hearing the parties, exparte ad-interim relief was vacated, as a result thereof Amended Rules continued to remain in operation.

4. The short point arising in the matter for decision is, validity of the statutory rules, particularly, Rules 222(1), 222(2) and 222(4) of the Bombay Motor Vehicles Rules, 1959 by which the authority required auto-rickshaws to install flag meters instead of yanke meters which were originally being installed. It is pertinent to note that earlier the petition raising identical challenge being Special Civil Application No.3457/81 was filed before this court. This court did not entertain the petition, but permitted the petitioner therein to withdraw the petition in order to prefer a representation before the State Government. It appears that representation was not granted. Against the decision of the Director of Transport rejecting the representation, the petitioner preferred an appeal before the State Government. The appeal came to be heard and decided by Mr.R.V.Chandramouli, Additional Chief Secretary to the State Government in the Home Department. The appellate order is a well considered order dealing with all the contentions raised by the appellant.

5. It is evident from perusal of the said order that

auto-rikshaws are required to instal flag meters in the larger interest of the passengers as in case of yanke meters, passenger does not know exact fare which is to be paid by him to the auto-rikshaw driver, as the amount mentioned in the yanke meter is required to be converted into rupees, as per the formula which keeps changing with the change in rate of auto-rikshaw fares as may be fixed by the Government. Therefore, passengers are never sure whether they are being charged fare correctly or not. On the other hand, in case of flag meters, that is, meters which are similar to the meters installed on Taxis, the amount required to be paid by the passenger is visible in the meter itself. Therefore, question of applying any formula does not arise.

6. It is also pertinent to note that when the Director of Transport had granted the approval to the yanke meters for auto-rikshaws, the said decision came to be challenged in Special Civil Application No.1389/70. This Court (Coram: S.H.Sheth,J) by judgment and order dated 10.3.1971 allowed the petition and issued a writ of mandamus directing the Director of Transport to cancel the approval granted by him to yank type meter as it was in violation of Rules, 221, 222 and 226 of the Motor Vehicle Rules, 1959. The said judgment was challenged in Letters Patent Appeal being Letters Patent Appeal No.167/71. However, the appeal came to be withdrawn on 9.12.1971. In view of the reasoning which appealed to this court while allowing the petition, this court does not find this to be a fit case for exercising discretionary prerogative writ jurisdiction under Article 226 of the Constitution in favour of the present petitioner.

7. Having perused the memo of the petition and the reasoning given in the appellate order of the Additional Chief Secretary to the State Government in the Home Department, this court does not find any merit in the petition. The petition, therefore, deserves to be dismissed and accordingly the same is dismissed. Rule is discharged. There shall be no order as to costs.

(M.S.Shah,J.)

(pathan)